



February 25, 2000

Ms. Paula A. Jones
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2000-0724

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133389.

The Employees Retirement System ("ERS") received a request for information relating to the applications for benefits in connection with the death of two volunteer firemen. You ask whether the information responsive to the request is excepted from disclosure under sections 552.101 and 552.115 of the Government Code.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 815.503(a) of the Government Code provides that "records of members and annuitants under retirement plans administered by [ERS] that are in the custody of [ERS] . . . are confidential[.]" The records at issue here were obtained by ERS in connection with its administration of benefits for eligible survivors of certain volunteer fire fighters and other individuals under chapter 615 of the Government Code. In our opinion, section 815.503(a) does not apply to the information at issue here because the chapter 615 benefits programs are not "retirement plans" within the meaning of section 815.503. Therefore, the information may not be withheld under section 815.503.

Section 552.101 also incorporates common law privacy protection. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Notably, however, common law privacy protection lapses upon the death of the subject. Open Records Decision No. 272 (1981). We

have marked portions of the submitted information which must be withheld under common law privacy.

Finally, section 552.115 of the Gov't Code excepts from disclosure certain birth or death records "maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official." Since the records at issue here are maintained by ERS and not the bureau of vital statistics of the Texas Department of Health or a local registration official, section 552.115 does not apply to the records. Except as noted above, you must release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

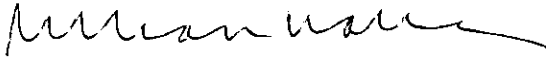
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "William Walker", with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 133389

Encl. Submitted documents

cc: Mr. William N. Warren
Kelly Hart & Hallman
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(w/o enclosures)